

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.427 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

Arjun Singh son of Late Ram Sharan Singh
Resident of village Imadpur, P.S. Biharsharif , District Nalana.

.... Appellant

Versus

State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Baban Roy, Adv. (Amicus Curiae)

For the Respondent : Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 25-07-2018

No body appears on repeated calls, as such Mr. Baban Roy, Adv. is appointed as the Amicus Curiae to assist this case.

2. The sole appellant has been convicted under Section 306 of the Indian Penal Code and sentenced to undergo R.I. for three years and further been sentenced under Section 201 of the Indian Penal Code and sentenced to undergo R.I. for two years, vide judgment and order dated 7.8.2003 passed by Sri Awadhesh Kishore Prasad Singh, Presiding Officer, Additional court no.1, Nalanda in Sessions Trial No.295 of 1991/119 of 2002 and 199 of 2002 and the other accused persons have been acquitted from the charges levelled against them.

3. The prosecution case as appears that an U.D. case has been filed on recovery of dead body of a 16 years old girl at the cremation ghat and subsequently a case under Sections 306, 201, 328/34 of the Indian Penal Code was registered by the Officer



Incharge against the appellant, his wife and his son-in-law, which is registered as Bihar P.S.Case No.232 of 1990 alleging therein that the appellant has abated the deceased due to which she had committed suicide. On investigation the charge sheet has been submitted and the case has been committed to the court of Sessions, which ultimately travelled to the court of Sri Awadhesh Kishore Prasad Singh, Presiding Officer, Additional court no.1, Nalanda, for trial and disposal.

4. During the trial, the charges were framed under Section 306 of the Indian Penal Code and under Section 201 of the Indian Penal Code against the appellant and two other accused persons .

5. In order to substantiate the charges levelled against appellants, four witnesses have been examined, they are P.W.1 Ram Prasad Yadav who identified his signature on the inquest report, P.W.2 Raj Ballav Singh, a formal witness, who has proved formal FIR, P.W.3 Md. Ozair Alam, Headmaster of School, who has identified the photograph of the dead body claiming to be Seema Singh daughter of the appellant Arjun Singh and P.W.4. Baldeo Singh. Apart from that F.I.R. is marked as Ext.1.

6. On perusal of the evidence it appears that the case is based only on the evidence of the P.Ws. 3 and 4. Evidence of P.W.3 discloses that the police has shown him admit card and enquired about the girl and he has identified her as Seema Singh daughter of Arjun



Singh.

7. P.W.4 is the unemployed youth and his evidence discloses that he knew her as Gudia daughter of Arjun Singh and Arjun Singh and co-villagers have killed his daughter along with his wife and son-in-law and threw the deadbody in the Mani Ram Akhara. It is also stated that Gudia had been administered poison by them. This witness has been cross examined and he has stated that his both hands were cut in an accident of 1983 and he has denied a suggestion that he has been made accused in a case as the bomb had exploded and he lost his hands and he has not gone to the jail but further stated that he had been to jail for 10-15 days and further disclosed that he had gone jail several times. From his evidence, it further appears that the appellant Arjun Singh is the son of Ram Sharan Singh and Ram Sharan Singh has one brother Raghunanand Singh who has four sons Bhola, Balmiki, Ramotar and Maharana Singh and Balmiki Singh had lodged a case against father and brother of this witness of *dacoity*. He has also stated that his statement was recorded by the police on 14.5.1990 and he has denied a suggestion that it is not true that his statement was not recorded. Further his attention has been drawn towards the statement made before the police, to which he has stated that he had stated before the police that Gudia was murdered and also stated that Arjun Singh, wife and his son- in- law had killed her and threw her dead body near Mani Ram Akhara and he



has also stated that they had administered poison to her.

8. Defence of the accused persons is of innocence and of false implication.

9. Learned trial court on conclusion of the trial has convicted the appellant under Seciton 306/201 of the IPC as stated above.

10. Submission of the learned *Amicus Curiae* is that this case is based on the solitary evidence of P.W.4 and evidence of P.w.4 clearly shows that he was accused in several cases as such his evidence is not free from reasonable doubt. Further submission is that his attention has been drawn towards the statement made before the police that though he has stated before the police but the I.O. has not been examined and in absence of the non-examination of the I.O. , his evidence can not be confronted with the I.O. as such the prosecution has caused great prejudice and there is no corroboration to his evidence, hence, conviction of the appellant on the basis of evidence of P.W.4 does not require inspire confidence, hence, conviction of the appellant is not sustainable in the eye of law.

11. Learned counsel for the State has supported the judgment of guilt.

12. From the discussions as made above, it appears that the case is based only on the evidence of P.W.4 The appellant has remained in custody earlier in a case and his father was also accused



in a case lodged by the cousin brother of the appellant and P.W.4 is not an eye witness of the occurrence. All the above facts showed that evidence of P.W.4 is not free from blemish and does not appear to be trustworthy. Furthermore the I.O. has not been examined in this case as such he could not be confronted with the contradictions, which was in the evidence of P.W.4 and that caused serious prejudice to the prosecution. Moreover, evidence of P.W.4 also does not show as to what manner the appellant has abated his daughter in committing suicide by the deceased.

13. In view of facts and circumstances as made above, the prosecution has failed to prove its case under Section 306 and 201 of the Indian Penal Code beyond all reasonable doubt.

14. Accordingly, this appeal is allowed, the judgment and the order are set aside and as the appellant is on bail, hence, he is discharged from all liabilities of the bail bond.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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